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HOUSE BILL 676

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO DENTAL HEALTH CARE; EXPANDING THE SCOPE OF PRACTICE OF DENTAL HYGIENISTS; AMENDING PROVISIONS OF THE DENTAL HEALTH CARE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended by Laws 2008, Chapter 9, Section 3 and by Laws 2008, Chapter 44, Section 4) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

1 C. "biological product" means a virus, therapeutic
2 serum, toxin, antitoxin or analogous product applicable to the
3 prevention, treatment or cure of diseases or injuries of humans
4 and domestic animals, and, as used within the meaning of this
5 definition:

6 (1) a "virus" is interpreted to be a product
7 containing the minute living cause of an infectious disease and
8 includes filterable viruses, bacteria, rickettsia, fungi and
9 protozoa;

10 (2) a "therapeutic serum" is a product
11 obtained from blood by removing the clot or clot components and
12 the blood cells;

13 (3) a "toxin" is a product containing a
14 soluble substance poisonous to laboratory animals or humans in
15 doses of one milliliter or less of the product and having the
16 property, following the injection of nonfatal doses into an
17 animal, or causing to be produced therein another soluble
18 substance that specifically neutralizes the poisonous substance
19 and that is demonstrable in the serum of the animal thus
20 immunized; and

21 (4) an "antitoxin" is a product containing the
22 soluble substance in serum or other body fluid of an immunized
23 animal that specifically neutralizes the toxin against which
24 the animal is immune;

25 D. "controlled substance" means a drug, substance

1 or immediate precursor enumerated in Schedules I through V of
2 the Controlled Substances Act;

3 E. "drug" means articles:

4 (1) recognized in an official compendium;

5 (2) intended for use in the diagnosis, cure,
6 mitigation, treatment or prevention of disease in humans or
7 other animals and includes the domestic animal biological
8 products regulated under the federal Virus-Serum-Toxin Act,
9 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products
10 applicable to humans regulated under Federal 58 Stat 690, as
11 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
12 and 42 U.S.C. 262;

13 (3) other than food, that affect the structure
14 or any function of the human body or the bodies of other
15 animals; and

16 (4) intended for use as a component of
17 Paragraph (1), (2) or (3) of this subsection, but does not
18 include devices or their component parts or accessories;

19 F. "dangerous drug" means a drug, other than a
20 controlled substance enumerated in Schedule I of the Controlled
21 Substances Act, that because of a potentiality for harmful
22 effect or the method of its use or the collateral measures
23 necessary to its use is not safe except under the supervision
24 of a practitioner licensed by law to direct the use of such
25 drug and hence for which adequate directions for use cannot be

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1 prepared. "Adequate directions for use" means directions under
2 which the layperson can use a drug or device safely and for the
3 purposes for which it is intended. A drug shall be dispensed
4 only upon the prescription of a practitioner licensed by law to
5 administer or prescribe the drug if it:

6 (1) is a habit-forming drug and contains any
7 quantity of a narcotic or hypnotic substance or a chemical
8 derivative of such substance that has been found under the
9 federal act and the board to be habit forming;

10 (2) because of its toxicity or other potential
11 for harmful effect or the method of its use or the collateral
12 measures necessary to its use is not safe for use except under
13 the supervision of a practitioner licensed by law to administer
14 or prescribe the drug;

15 (3) is limited by an approved application by
16 Section 505 of the federal act to the use under the
17 professional supervision of a practitioner licensed by law to
18 administer or prescribe the drug;

19 (4) bears the legend: "Caution: federal law
20 prohibits dispensing without prescription.";

21 (5) bears the legend: "Caution: federal law
22 restricts this drug to use by or on the order of a licensed
23 veterinarian."; or

24 (6) bears the legend "RX only";

25 G. "counterfeit drug" means a drug that is

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1 deliberately and fraudulently mislabeled with respect to its
2 identity, ingredients or sources. Types of such pharmaceutical
3 counterfeits may include:

4 (1) "identical copies", which are counterfeits
5 made with the same ingredients, formulas and packaging as the
6 originals but not made by the original manufacturer;

7 (2) "look-alikes", which are products that
8 feature high-quality packaging and convincing appearances but
9 contain little or no active ingredients and may contain harmful
10 substances;

11 (3) "rejects", which are drugs that have been
12 rejected by the manufacturer for not meeting quality standards;
13 and

14 (4) "relabels", which are drugs that have
15 passed their expiration dates or have been distributed by
16 unauthorized foreign sources and may include placebos created
17 for late-phase clinical trials;

18 H. "device", except when used in Subsection P of
19 this section and in Subsection G of Section 26-1-3, Subsection
20 L and Paragraph (4) of Subsection A of Section 26-1-11 and
21 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,
22 apparatus, implement, machine, contrivance, implant, in vitro
23 reagent or other similar or related article, including any
24 component, part or accessory, that is:

25 (1) recognized in an official compendium;

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1 (2) intended for use in the diagnosis of
2 disease or other conditions or in the cure, mitigation,
3 treatment or prevention of disease in humans or other animals;
4 or

5 (3) intended to affect the structure or a
6 function of the human body or the bodies of other animals and
7 that does not achieve any of its principal intended purposes
8 through chemical action within or on the human body or the
9 bodies of other animals and that is not dependent on being
10 metabolized for achievement of any of its principal intended
11 purposes;

12 I. "prescription" means an order given individually
13 for the person for whom prescribed, either directly from a
14 licensed practitioner or the practitioner's agent to the
15 pharmacist, including by means of electronic transmission, or
16 indirectly by means of a written order signed by the
17 prescriber, and bearing the name and address of the prescriber,
18 the prescriber's license classification, the name and address
19 of the patient, the name and quantity of the drug prescribed,
20 directions for use and the date of issue;

21 J. "practitioner" means a certified advanced
22 practice chiropractic physician, physician, doctor of oriental
23 medicine, dentist, veterinarian, certified nurse practitioner,
24 clinical nurse specialist, pharmacist, pharmacist clinician,
25 certified nurse-midwife, physician assistant, prescribing

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1 psychologist, dental hygienist or other person licensed or
2 certified to prescribe and administer drugs that are subject to
3 the New Mexico Drug, Device and Cosmetic Act;

4 K. "cosmetic" means:

5 (1) articles intended to be rubbed, poured,
6 sprinkled or sprayed on, introduced into or otherwise applied
7 to the human body or any part thereof for cleansing,
8 beautifying, promoting attractiveness or altering the
9 appearance; and

10 (2) articles intended for use as a component
11 of any articles enumerated in Paragraph (1) of this subsection,
12 except that the term shall not include soap;

13 L. "official compendium" means the official United
14 States pharmacopoeia national formulary or the official
15 homeopathic pharmacopoeia of the United States or any
16 supplement to either of them;

17 M. "label" means a display of written, printed or
18 graphic matter upon the immediate container of an article. A
19 requirement made by or under the authority of the New Mexico
20 Drug, Device and Cosmetic Act that any word, statement or other
21 information appear on the label shall not be considered to be
22 complied with unless the word, statement or other information
23 also appears on the outside container or wrapper, if any, of
24 the retail package of the article or is easily legible through
25 the outside container or wrapper;

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1 N. "immediate container" does not include package
2 liners;

3 O. "labeling" means all labels and other written,
4 printed or graphic matter:

5 (1) on an article or its containers or
6 wrappers; or

7 (2) accompanying an article;

8 P. "misbranded" means a label to an article that is
9 misleading. In determining whether the label is misleading,
10 there shall be taken into account, among other things, not only
11 representations made or suggested by statement, word, design,
12 device or any combination of the foregoing, but also the extent
13 to which the label fails to reveal facts material in the light
14 of such representations or material with respect to
15 consequences that may result from the use of the article to
16 which the label relates under the conditions of use prescribed
17 in the label or under such conditions of use as are customary
18 or usual;

19 Q. "advertisement" means all representations
20 disseminated in any manner or by any means, other than by
21 labeling, for the purpose of inducing, or that are likely to
22 induce, directly or indirectly, the purchase of drugs, devices
23 or cosmetics;

24 R. "antiseptic", when used in the labeling or
25 advertisement of an antiseptic, shall be considered to be a

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1 representation that it is a germicide, except in the case of a
2 drug purporting to be or represented as an antiseptic for
3 inhibitory use as a wet dressing, ointment, dusting powder or
4 such other use as involves prolonged contact with the body;

5 S. "new drug" means a drug:

6 (1) the composition of which is such that the
7 drug is not generally recognized, among experts qualified by
8 scientific training and experience to evaluate the safety and
9 efficacy of drugs, as safe and effective for use under the
10 conditions prescribed, recommended or suggested in the labeling
11 thereof; or

12 (2) the composition of which is such that the
13 drug, as a result of investigation to determine its safety and
14 efficacy for use under such conditions, has become so
15 recognized, but that has not, otherwise than in such
16 investigations, been used to a material extent or for a
17 material time under such conditions;

18 T. "contaminated with filth" applies to a drug,
19 device or cosmetic not securely protected from dirt, dust and,
20 as far as may be necessary by all reasonable means, from all
21 foreign or injurious contaminations, or a drug, device or
22 cosmetic found to contain dirt, dust, foreign or injurious
23 contamination or infestation;

24 U. "selling of drugs, devices or cosmetics" shall
25 be considered to include the manufacture, production,

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1 processing, packing, exposure, offer, possession and holding of
2 any such article for sale and the sale and the supplying or
3 applying of any such article in the conduct of a drug or
4 cosmetic establishment;

5 V. "color additive" means a material that:

6 (1) is a dye, pigment or other substance made
7 by a process of synthesis or similar artifice or extracted,
8 isolated or otherwise derived, with or without intermediate or
9 final change of identity, from a vegetable, mineral, animal or
10 other source; or

11 (2) when added or applied to a drug or
12 cosmetic or to the human body or a part thereof, is capable,
13 alone or through reaction with other substances, of imparting
14 color thereto; except that such term does not include any
15 material that has been or hereafter is exempted under the
16 federal act;

17 W. "federal act" means the Federal Food, Drug and
18 Cosmetic Act;

19 X. "restricted device" means a device for which the
20 sale, distribution or use is lawful only upon the written or
21 oral authorization of a practitioner licensed by law to
22 administer, prescribe or use the device and for which the
23 federal food and drug administration requires special training
24 or skills of the practitioner to use or prescribe. This
25 definition does not include custom devices defined in the

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1 federal act and exempt from performance standards or premarket
2 approval requirements under Section 520(b) of the federal act;

3 Y. "prescription device" means a device that,
4 because of its potential for harm, the method of its use or the
5 collateral measures necessary to its use, is not safe except
6 under the supervision of a practitioner licensed in this state
7 to direct the use of such device and for which "adequate
8 directions for use" cannot be prepared, but that bears the
9 label: "Caution: federal law restricts this device to sale by
10 or on the order of a _____", the blank to be filled with
11 the word "physician", "physician assistant", "certified
12 advanced practice chiropractic physician", "doctor of oriental
13 medicine", "dentist", "veterinarian", "certified nurse
14 practitioner", "clinical nurse specialist", "pharmacist",
15 "pharmacist clinician", [ø] "certified nurse-midwife",
16 "prescribing psychologist" or "dental hygienist" or with the
17 descriptive designation of any other practitioner licensed in
18 this state to use or order the use of the device;

19 Z. "valid practitioner-patient relationship" means
20 a professional relationship, as defined by the practitioner's
21 licensing board, between the practitioner and the patient; and

22 AA. "pedigree" means the recorded history of a
23 drug."

24 Section 2. Section 61-5A-2 NMSA 1978 (being Laws 1994,
25 Chapter 55, Section 2, as amended) is amended to read:

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1 "61-5A-2. PURPOSE.--

2 A. In the interest of the public health, safety and
3 welfare and to protect the public from the improper,
4 unprofessional, incompetent and unlawful practice of dentistry
5 and dental hygiene, it is necessary to provide laws and rules
6 controlling the granting and use of the privilege to practice
7 dentistry and dental hygiene and to establish a board of dental
8 health care and a dental hygienists committee to implement and
9 enforce those laws and rules.

10 B. The primary duties of the New Mexico board of
11 dental health care are to issue licenses to qualified dentists
12 and owners of dental practices; to certify qualified dental
13 assistants, expanded function dental auxiliaries and community
14 dental health coordinators; to issue licenses to dental
15 hygienists through the dental hygienists committee; to
16 discipline incompetent or unprofessional dentists, dental
17 assistants, owners of dental practices and, through the dental
18 hygienists committee, dental hygienists; and to aid in the
19 rehabilitation of impaired dentists and dental hygienists for
20 the purpose of protecting the public."

21 Section 3. Section 61-5A-3 NMSA 1978 (being Laws 1994,
22 Chapter 55, Section 3, as amended) is amended to read:

23 "61-5A-3. DEFINITIONS.--As used in the Dental Health Care
24 Act:

25 A. "assessment" means the review and documentation

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1 of the oral condition, and the recognition and documentation of
2 deviations from the healthy condition, without a diagnosis to
3 determine the cause or nature of disease or its treatment;

4 B. "board" means the New Mexico board of dental
5 health care;

6 C. "certified dental assistant" means an individual
7 certified by the dental ~~[assistant]~~ assisting national board;

8 D. "collaborative dental hygiene practice" means [~~a~~
9 ~~New Mexico licensed dental hygienist practicing according to~~
10 ~~Subsections D and E of Section 61-5A-4 NMSA 1978]~~ the
11 application of the science of the prevention and treatment of
12 oral disease through the provision of educational, assessment,
13 preventive, clinical and other therapeutic services as
14 specified in Subsection B of Section 61-5A-4 NMSA 1978. This
15 practice shall be in a cooperative working relationship with a
16 consulting dentist. A dental hygienist in a collaborative
17 dental hygiene practice may practice without general
18 supervision, pursuant to the rules promulgated by the board and
19 the committee;

20 E. "committee" means the New Mexico dental
21 hygienists committee;

22 F. "community dental health coordinator" means a
23 certified dental assistant who:

24 (1) has met the educational criteria for a
25 community dental health coordinator established by the board;

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1 (2) provides educational, preventive, limited
2 palliative and assessment services; and

3 (3) works collaboratively under the general
4 supervision of a licensed dentist or licensed dental hygienist
5 in settings other than traditional dental offices and clinics;

6 [F-] G. "consulting dentist" means a dentist who
7 has entered into an approved agreement to provide consultation
8 and create protocols with a collaborating dental hygienist and,
9 when required, to provide diagnosis and authorization for
10 services, in accordance with the rules of the board and the
11 committee;

12 [G-] H. "dental assistant certified in expanded
13 functions" means a dental assistant who meets specific
14 qualifications set forth by rule of the board;

15 I. "dental hygiene focused examination" means the
16 documentation of existing oral and relevant systemic conditions
17 and the identification of existing and potential oral disease
18 to develop, communicate, implement and evaluate a plan of oral
19 hygiene care and treatment;

20 [H-] J. "dental hygienist" means an individual who
21 has graduated and received a degree from a dental hygiene
22 educational program accredited by the [~~joint~~] commission on
23 dental accreditation, which provides a minimum of two academic
24 years of dental hygiene curriculum and is an institution of
25 higher education and, except as the context otherwise requires,

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1 who holds a license to practice dental hygiene in New Mexico;

2 ~~[I.]~~ K. "dental laboratory" means any place where
3 dental restorative, prosthetic, cosmetic and therapeutic
4 devices or orthodontic appliances are fabricated, altered or
5 repaired by one or more persons under the orders and
6 authorization of a dentist;

7 ~~[J.]~~ L. "dental technician" means an individual,
8 other than a licensed dentist, who fabricates, alters, repairs
9 or assists in the fabrication, alteration or repair of dental
10 restorative, prosthetic, cosmetic and therapeutic devices or
11 orthodontic appliances under the orders and authorization of a
12 dentist;

13 ~~[K.]~~ M. "dentist" means an individual who has
14 graduated and received a degree from a school of dentistry that
15 is accredited by the ~~[joint]~~ commission on dental accreditation
16 and, except as the context otherwise requires, who holds a
17 license to practice dentistry in New Mexico;

18 N. "expanded function dental auxiliary" means a
19 dental assistant or dental hygienist who has successfully
20 completed a board-approved training program and examination by
21 a regional examining body approved by the board to test
22 proficiency in restorative procedures and who performs specific
23 procedures under the indirect supervision of a dentist by
24 meeting the special educational, experience and examination
25 criteria established by the board;

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1 ~~[L.]~~ O. "general supervision" means the
2 authorization by a dentist of the procedures to be used by a
3 dental hygienist, dental assistant or dental student and the
4 execution of the procedures in accordance with a dentist's
5 diagnosis and treatment plan at a time the dentist is not
6 physically present and in facilities as designated by rule of
7 the board;

8 ~~[M.]~~ P. "indirect supervision" means that a
9 dentist, or in certain settings a dental hygienist or dental
10 assistant certified in expanded functions, is present in the
11 treatment facility while authorized treatments are being
12 performed by a dental hygienist, dental assistant or dental
13 student; ~~[and~~

14 ~~N.]~~ Q. "non-dentist owner" means an individual not
15 licensed as a dentist in New Mexico or a corporate entity not
16 owned by a majority interest of a New Mexico licensed dentist
17 that employs or contracts with a dentist or dental hygienist to
18 provide dental or dental hygiene services;

19 R. "palliative procedures" means non-surgical
20 reversible procedures that are meant to alleviate pain and
21 stabilize acute or emergent problems; and

22 S. "teledentistry" means a practice where a
23 licensed dentist provides limited diagnostic and treatment
24 planning services in cooperation with a dental student,
25 community dental health coordinator, licensed dental hygienist

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1 or another licensed dentist in real time using health
2 information technology."

3 Section 4. Section 61-5A-4 NMSA 1978 (being Laws 1994,
4 Chapter 55, Section 4, as amended) is amended to read:

5 "61-5A-4. SCOPE OF PRACTICE.--

6 A. As used in the Dental Health Care Act, "practice
7 of dentistry" means:

8 (1) the diagnosis, treatment, correction,
9 change, relief, prevention, prescription of remedy, surgical
10 operation and adjunctive treatment for any disease, pain,
11 deformity, deficiency, injury, defect, lesion or physical
12 condition involving both the functional and aesthetic aspects
13 of the teeth, gingivae, jaws and adjacent hard and soft tissue
14 of the oral and maxillofacial regions, including the
15 prescription or administration of any drug, medicine, biologic,
16 apparatus, brace, anesthetic or other therapeutic or diagnostic
17 substance or technique by an individual or the individual's
18 agent or employee gratuitously or for any fee, reward,
19 emolument or any other form of compensation whether direct or
20 indirect;

21 (2) representation of an ability or
22 willingness to do any act mentioned in Paragraph (1) of this
23 subsection;

24 (3) the review of dental insurance claims for
25 therapeutic appropriateness of treatment, including but not

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1 limited to the interpretation of radiographs, photographs,
2 models, periodontal records and narratives;

3 (4) the offering of advice or authoritative
4 comment regarding the appropriateness of dental therapies, the
5 need for recommended treatment or the efficacy of specific
6 treatment modalities for other than the purpose of consultation
7 to another dentist; or

8 (5) with specific reference to the teeth,
9 gingivae, jaws or adjacent hard or soft tissues of the oral and
10 maxillofacial region in living persons, to propose, agree or
11 attempt to do or make an examination or give an estimate of
12 cost with intent to, or undertaking to:

13 (a) perform a physical evaluation of a
14 patient in an office or in a hospital, clinic or other medical
15 or dental facility prior to, incident to and appropriate to the
16 performance of any dental services or oral or maxillofacial
17 surgery;

18 (b) perform surgery, an extraction or
19 any other operation or to administer an anesthetic in
20 connection therewith;

21 (c) diagnose or treat a condition,
22 disease, pain, deformity, deficiency, injury, lesion or other
23 physical condition;

24 (d) correct a malposition;

25 (e) treat a fracture;

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1 (f) remove [~~calcareous deposits~~] plaque,
2 calculus and stains;

3 (g) replace missing anatomy with an
4 artificial substitute;

5 (h) construct, make, furnish, supply,
6 reproduce, alter or repair an artificial substitute or
7 restorative or corrective appliance or place an artificial
8 substitute or restorative or corrective appliance in the mouth
9 or attempt to adjust it;

10 (i) give interpretations or readings of
11 dental radiographs; [~~or~~]

12 (j) do any other remedial, corrective or
13 restorative work; or

14 (k) provide limited diagnostic and
15 treatment planning via teledentistry.

16 B. As used in the Dental Health Care Act, "the
17 practice of dental hygiene" means the application of the
18 science of the prevention and treatment of oral disease through
19 the provision of educational, assessment, preventive, clinical
20 and other therapeutic services under the general supervision of
21 a dentist. "The practice of dental hygiene" includes:

22 (1) prophylaxis, which is the [~~treatment of~~
23 ~~human teeth by removing from their surface calcareous deposits~~
24 ~~and stain, removing accumulated accretions and polishing the~~
25 ~~surfaces of the teeth] removal of plaque, calculus and stains~~

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1 from tooth structures as a means to control local irritational
2 factors;

3 (2) removing diseased crevicular tissue and
4 related non-surgical periodontal procedures;

5 (3) assessment for the application of pit and
6 fissure sealants without a dentist's evaluation except when,
7 upon clinical evaluation of the tooth surface, a sharp explorer
8 exhibits resistance to removal;

9 [~~3~~] (4) the application of pit and fissure
10 sealants without mechanical alteration of the tooth [~~fluorides~~
11 ~~and other topical therapeutic and preventive agents~~];

12 (5) the application of fluorides and other
13 topical therapeutic and preventive agents;

14 [~~4~~] (6) exposing and [~~referring to~~]
15 assessing oral radiographs for abnormalities;

16 [~~5~~] (7) screening to identify indications of
17 oral abnormalities;

18 (8) performance of dental hygiene focused
19 examinations;

20 [~~6~~] (9) assessment of periodontal
21 conditions; and

22 [~~7~~] (10) such other closely related services
23 as permitted by the rules of the committee and the board.

24 C. In addition to performing dental hygiene as
25 defined in Subsection B of this section, a dental hygienist may

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1 apply preventive topical fluorides and remineralization agents
2 without supervision in public and community medical facilities,
3 schools, hospitals, long-term care facilities and such other
4 settings as the committee may determine by rule ratified by the
5 board, so long as the dental hygienist's license is not
6 restricted pursuant to the Impaired Dentists and Dental
7 Hygienists Act.

8 D. In addition to performing dental hygiene as
9 defined in Subsection B of this section, dental hygienists who
10 have met the criteria, as the committee shall establish and the
11 board shall ratify, may administer local anesthesia under
12 indirect supervision of a dentist. Dental hygienists who, in
13 addition to these criteria, have administered local anesthesia
14 under the indirect supervision of a dentist for at least two
15 years and can document, with a signed affirmation by the
16 dentist, the competent completion of twenty cases during that
17 period may be certified to administer local anesthetic under
18 general supervision on the written prescription of a dentist.
19 A dental hygienist's authority to administer local anesthesia
20 pursuant to this subsection only applies in situations where
21 the dental hygienist has made the determination that emergency
22 medical services are reasonably accessible.

23 E. Dental hygienists may prescribe, administer and
24 distribute fluoride supplements, topically applied fluoride and
25 topically applied antimicrobials, pursuant to rules adopted by

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1 the committee and ratified by the board, after consultation
2 with the board of pharmacy if the dental hygienist prescribes,
3 administers or distributes under the direction of a supervising
4 licensed New Mexico dentist, or a consulting dentist as defined
5 in Subsection G of Section 61-5A-3 NMSA 1978, within the
6 parameters of a board-approved formulary and guidelines
7 established pursuant to Subsection O of Section 61-5A-10 NMSA
8 1978. The distribution process shall comply with state laws
9 concerning prescription packaging, labeling and record-keeping
10 requirements. Dental hygienists shall not otherwise dispense
11 dangerous drugs or controlled substances.

12 [E-] F. A New Mexico licensed dental hygienist may
13 be certified for collaborative dental hygiene practice in
14 accordance with the educational and experience criteria
15 established collaboratively by the committee and the board.

16 [F-] G. For the purpose of this section,
17 "collaborative dental hygiene practice" means the application
18 of the science of the prevention and treatment of oral disease
19 through the provision of educational, assessment, preventive,
20 clinical and other therapeutic services as specified in
21 [~~Subsection~~] Subsections B, D and E of this section in a
22 cooperative working relationship with a consulting dentist, but
23 without general supervision as set forth by the rules
24 established and approved by both the board and the committee."

25 Section 5. Section 61-5A-5 NMSA 1978 (being Laws 1994,

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1 Chapter 55, Section 5, as amended) is amended to read:

2 "61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

3 A. Unless licensed to practice as a dentist under
4 the Dental Health Care Act, no person shall:

5 (1) practice dentistry;

6 (2) use the title "dentist", "dental surgeon",
7 "oral surgeon" or any other title, abbreviation, letters,
8 figures, signs or devices that indicate the person is a
9 licensed dentist; or

10 (3) perform any of the acts enumerated under
11 the definition of the practice of dentistry as defined in the
12 Dental Health Care Act.

13 B. The following, under the stipulations described,
14 may practice dentistry or an area of dentistry without a New
15 Mexico dental license:

16 (1) regularly licensed physicians or surgeons
17 are not prohibited from extracting teeth or treating any
18 disease coming within the province of the practice of medicine;

19 (2) New Mexico licensed dental hygienists may
20 provide those services within their scope of practice that are
21 also within the scope of the practice of dentistry;

22 (3) any dental student duly enrolled in an
23 accredited school of dentistry recognized by the board, while
24 engaged in educational programs offered by the school in
25 private offices, public clinics or educational institutions

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1 within the state of New Mexico under the indirect supervision
2 of a licensed dentist;

3 (4) any dental hygiene or dental assisting
4 student duly enrolled in an accredited school of dental hygiene
5 or dental assisting engaged in procedures within or outside the
6 scope of dental hygiene that are part of the curriculum of that
7 program in the school setting and under the indirect
8 supervision of a faculty member of the accredited program who
9 is a licensed dentist, dental hygienist or dental assistant
10 certified in the procedures being taught;

11 (5) unlicensed persons performing for a
12 licensed dentist merely mechanical work upon inert matter in
13 the construction, making, alteration or repairing of any
14 artificial dental substitute, dental restorative or corrective
15 appliance, when the casts or impressions for the work have been
16 furnished by a licensed dentist and where the work is
17 prescribed by a dentist pursuant to a written authorization by
18 that dentist;

19 (6) commissioned dental officers of the
20 uniformed forces of the United States and dentists providing
21 services to the United States public health service, the United
22 States department of veterans [~~administration of the United~~
23 ~~States~~] affairs or within federally controlled facilities in
24 the discharge of their official duties; provided that such
25 persons who hold dental licenses in New Mexico shall be subject

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1 to the provisions of the Dental Health Care Act; and

2 (7) dental assistants performing adjunctive
3 services to the provision of dental care, under the indirect
4 supervision of a dentist, as determined by rule of the board if
5 such services are not within the practice of dental hygiene as
6 specifically listed in Subsection B of Section 61-5A-4 NMSA
7 1978, unless allowed in Subsection E of this section.

8 C. Unless licensed to practice as a dental
9 hygienist under the Dental Health Care Act, no person shall:

10 (1) practice as a dental hygienist;

11 (2) use the title "dental hygienist" or
12 abbreviation "R.D.H." or any other title, abbreviation,
13 letters, figures, signs or devices that indicate the person is
14 a licensed dental hygienist; or

15 (3) perform any of the acts defined as the
16 practice of dental hygiene in the Dental Health Care Act.

17 D. The following, under the stipulations described,
18 may practice dental hygiene or the area of dental hygiene
19 outlined without a New Mexico dental hygiene license:

20 (1) students enrolled in an accredited dental
21 hygiene program engaged in procedures that are part of the
22 curriculum of that program and under the indirect supervision
23 of a licensed faculty member of the accredited program;

24 (2) dental assistants or community dental
25 health coordinators working under general supervision who:

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1 (a) expose dental radiographs after
2 being certified in expanded functions by the board;

3 (b) perform rubber cup coronal
4 polishing, which is not represented as a prophylaxis, having
5 satisfied the educational requirements as established by rules
6 of the board;

7 (c) apply fluorides as established by
8 rules of the board; and

9 (d) perform those other dental hygienist
10 functions as recommended to the board by the committee and set
11 forth by rule of the board; and

12 (3) dental assistants certified in expanded
13 functions, working under the indirect supervision of a dental
14 hygienist certified for collaborative practice and under the
15 protocols established in a collaborative practice agreement
16 with a consulting dentist.

17 E. Dental assistants working under the indirect
18 supervision of a dentist and in accordance with the rules and
19 regulations established by the board may:

20 (1) expose dental radiographs;

21 (2) perform rubber cup coronal polishing that
22 is not represented as a prophylaxis;

23 (3) apply fluoride and pit and fissure
24 sealants without mechanical alteration of the tooth;

25 (4) perform those other dental hygienist

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1 functions as recommended to the board by the committee and set
2 forth by rule of the board; and

3 (5) perform such other related functions that
4 are not expressly prohibited by statute or rules of the board.

5 F. An expanded function dental auxiliary working
6 under the indirect supervision of a dentist and in accordance
7 with the rules and regulations established by the board may:

8 (1) place and shape direct restorations
9 without the use of rotary instruments in Class I, II, III, IV
10 or V cavities prepared by a dentist, when final finish and
11 occlusion is performed by the dentist;

12 (2) cement indirect and provisional
13 restorations for temporary use;

14 (3) take final impressions for temporary
15 protheses and appliances; and

16 (4) place temporary and sedative restorative
17 materials in unexcavated carious lesions and unprepared tooth
18 fractures.

19 G. A community dental health coordinator working
20 under the general supervision of a dentist and in accordance
21 with the rules and regulations established by the board may:

22 (1) place temporary and sedative restorative
23 material in unexcavated carious lesions and unprepared tooth
24 fractures;

25 (2) collect and transmit data and images using

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1 health information technology;

2 (3) dispense and apply medications on the
3 specific order of a dentist;

4 (4) provide limited palliative procedures for
5 dental emergencies in consultation with a supervising dentist
6 as allowed by the rules of the board; and

7 (5) perform such other related functions that
8 are not expressly prohibited by statute or rules of the board.

9 ~~[F-]~~ H. Unless licensed as a dentist or non-dentist
10 owner, or as otherwise exempt from the licensing requirements
11 of the Dental Health Care Act, no individual or corporate
12 entity shall:

13 (1) employ or contract with a dentist or
14 dental hygienist for the purpose of providing dental or dental
15 hygiene services as defined by their respective scopes of
16 practice; or

17 (2) enter into a managed care or other
18 agreement to provide dental or dental hygiene services in New
19 Mexico.

20 ~~[G-]~~ I. The following, under stipulations
21 described, may function as a non-dentist owner without a New
22 Mexico license:

23 (1) government agencies providing dental
24 services within affiliated facilities;

25 (2) government agencies engaged in providing

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1 public health measures to prevent dental disease;

2 (3) spouses of deceased licensed dentists or
3 dental hygienists for a period of one year following the death
4 of the licensee;

5 (4) accredited schools of dentistry, dental
6 hygiene and dental assisting providing dental services solely
7 in an educational setting;

8 (5) dental hygienists licensed in New Mexico
9 or corporate entities with a majority interest owned by a
10 dental hygienist licensed in New Mexico;

11 (6) federally qualified health centers, as
12 designated by the United States department of health and human
13 services, providing dental services;

14 (7) nonprofit community-based entities and
15 organizations that use public funds to provide dental and
16 dental hygiene services for indigent persons; and

17 (8) hospitals licensed by the department of
18 health."

19 Section 6. Section 61-5A-6 NMSA 1978 (being Laws 1994,
20 Chapter 55, Section 6) is amended to read:

21 "61-5A-6. CERTIFICATION OF DENTAL ASSISTANTS--EXPANDED
22 FUNCTION DENTAL AUXILIARIES AND COMMUNITY DENTAL HEALTH
23 COORDINATORS.--

24 A. A certified dental assistant, expanded function
25 dental auxiliary, community dental health coordinator or [a]

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1 dental assistant certified in expanded functions shall be
2 required to adhere to the educational requirements,
3 examinations, recertification criteria and fees as established
4 by rules and [~~regulation~~] regulations of the board. The fee
5 shall be the same for one or more expanded functions.

6 B. Certificates granted by the board may be
7 revoked, suspended, stipulated or otherwise limited, and [~~a~~
8 ~~dental assistant~~] certificate holders may be fined or placed on
9 probation if found guilty of violation of the Dental Health
10 Care Act.

11 C. No individual shall use the title "C.D.A."
12 unless granted certification by the dental assistant national
13 board.

14 D. Unless certified to practice as a dental
15 assistant certified in expanded functions or certified as an
16 expanded function dental auxiliary, no person shall:

17 (1) practice as a dental assistant certified
18 in expanded functions or as an expanded function dental
19 auxiliary as defined by [~~rule~~] rules of the board; or

20 (2) use the title or represent oneself as an
21 assistant certified in expanded functions, as an expanded
22 function dental auxiliary or use any title, abbreviation,
23 letters, figures, signs or devices that indicate the person is
24 a dental assistant certified in expanded functions or an
25 expanded function dental auxiliary."

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